



## **COMMUNITY DEVELOPMENT DEPARTMENT**

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### **PLANNING COMMISSION MEETING MINUTES**

#### **REGULAR MEETING**

**NOVEMBER 11, 2008**

**PRESENT:** Acevedo, Koepp-Baker, Davenport, Escobar, Lyle, Mueller, Tanda

**ABSENT:** None

**LATE:** None

**STAFF:** Planning Manager (PM) Rowe, Senior Planner (SP) Linder, Contract Planner (CP) Bischoff, Senior Civil Engineer (SCE) Creer and Minutes Clerk Johnson.

Chair Koepp-Baker called the meeting to order at 7:00 p.m., inviting all present to join ask she led the pledge of allegiance to the U.S. flag.

#### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Koepp-Baker opened the floor to public comment for matters not appearing on the agenda.

Commissioner Davenport read a letter addressed to Mayor Tate regarding his resignation from the Planning Commission November 12 due to his appointment to the Gailvan College Board of Trustees. Commissioner Davenport noted several accomplishments of the Commission during his term of office, and said he was proud of having worked with the 'great Commissioners and outstanding staff'.

The other Commissioners offered heartfelt congratulations, and said he had been 'excellent to work with, having presented solid ideas, and thoughtful comments'.

Noting that no others in attendance expressed a wish to address items not appearing on the agenda, the public hearing was closed.

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**CONSENT CALENDAR:**

**MINUTES:**

OCTOBER 28,  
2008

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE  
THE OCTOBER 28, 2008 MINUTES WITH THE FOLLOWING REVISIONS:

Page 4, paragraph 1(delete/correct): ... between now and ~~April 30 of next year, there would be no BMRs. However, the City Council said 5% low income BMRs.~~ ***June 30 of 2010, there would be a 5% low-income BMR requirement. However, the City Council said that there would be no BMR requirement through April 30 of 2009, and then a 5% low-income BMR requirement from then until June 30, 2010.***

Page 6, correct number sequence: ~~2) 3) 3) 4)~~

Page 6, 3) 1st paragraph: ensure BMR requirements ~~are being met.~~ ***can be met. Staff needs to ensure that when previously planned BMR lots are converted to market rate lots that there are sufficient BMR-sized lots remaining in the project to satisfy the BMR requirements for the remainder of the project."***

Page 7, paragraph 4: ~~..lengthened~~ ***increased significantly***

Page 12, paragraph 4: ... that even ~~though~~ ***though***

**THE MOTION PASSED (6-0-1-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: KOEPP-BAKER; ABSENT: NONE.**

*Disclosure: Commissioners Lyle and Mueller informed that they had (individually) visited the sites of items 1 and 2 on the agenda.*

**PUBLIC  
HEARINGS:**

1) ANX-08-06/  
ZA-08-14: W.  
MAIN-ACTON

CP Bischoff presented the staff report indicating the City proposes several actions, which involve two parcels located at 905 W. Main Ave. One of the two parcels (APN 773-06-008), is 20 acres in size and located outside the city limits. The other parcel (APN 773-06-009) is 4.5 acres in size and is located in the city limits. The actions proposed include: 1) pre-zoning to *Open Space* the unincorporated parcel (APN 773-06-008) consistent with its *Open Space* General Plan land use designation; 2) annexation of the unincorporated parcel into the City of Morgan Hill; 3) a lot line adjustment that would reduce APN 773-06-008 to approximately 18 acres in size and increase APN 773-06-009 to approximately 6.5 acres in size; and 4) acquisition of the resultant 18-acre parcel by the City of Morgan Hill. He further indicated that the first two of these actions are on the agenda this evening. The third and fourth actions would occur subsequent to LAFCO approval of the annexation.

CP Bischoff explained that currently the General Plan calls for open space preservation of El Toro above the 500-foot contour with the property proposed for annexation being above that contour. He also noted that in the City's Greenbelt Study, El Toro had received the highest priority for preservation. The purpose of acquisition of the parcel is to preserve its open space qualities.

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CP Bischoff went on to explain that the purpose of the future lot line adjustment is to allow the possibility of subdivision of the 4.5-acre parcel (that would be increased to 6.5 acres in size) into a 5-acre parcel zoned Open Space and a 1.5-acre parcel zoned R-1 12,000. The R-1 12,000 parcel would then have the potential for further subdivision into three lots. CP Bischoff went on to say that, the owners have no plans for subdivision at this time, but would like that potential in the future. If future subdivision were to be proposed, additional environmental analysis would be required.

CP Bischoff indicated that a letter had been received from LAFCO requesting changes and additional information is added to the Initial Study prepared for the applications.

Commissioner Mueller asked if the errors in the initial study were of such magnitude that the initial study would have to be redistributed. "No," CP Bischoff said, "the City can address those minor issues, and prepare a supplemental memo for the City Council when the matter is before that body for action." Commissioner Mueller noted that there was no reference to a prior Micro Measure C Application. "No," CP Bischoff said, "that application was found to be invalid by the Courts. There is no interest by the present owner to sell or subdivide the property."

Chair Koepp-Baker clarified that there was nothing at the LAFCo level to impede the requested actions.

Responding to a question from Commissioner Tanda regarding the lot line adjustment, CP Bischoff explained the configuration and shape of the property following the adjustment. He said, "Should this property ever be proposed for subdivision, only about 1 – 1.5 acres are possible for subdivision."

Commissioner Mueller referenced the slope on the southern third of the property. CP Bischoff said there was adequate area for construction of a house on slopes of about 12 percent.

Commissioner Mueller referenced past development in the City, which resulted in high slopes in back yards, which proved to be troublesome. "I think we can learn from Spring Avenue," he said.

Chair Koepp-Baker opened the public hearing.

Frank Pravettoni addressed the Commissioners, saying he was one of property owners along with his siblings, and could answer questions. Mr. Pravettoni commented that the family would like to see a trail completed on the property some day.

Howard Lomcke, 900 W. Main Ave., identified his property as the flag lot adjacent to the subject property. "I led the fight to maintain the existing zoning line. It now seems to be a lot of work being done on this thing," he said. "Is the property where the house is located grandfathered so they can build?" CP Bischoff explained that the Open Space zoning requires a minimum lot size of five acres. The lot line adjustment would allow a 5-acre lot to be created around the existing house and the 1.5-acre R-1 12,000 zoned area to be separated into its own lot. Mr. Lomcke said a problem in the area is drainage, and additional building could intensify that problem.

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Commissioner Mueller explained that the intent is to have the five-acre parcel with the home on it separated from the R-1/12,000 zoned area. "You need to remember," Commissioner Mueller said, "the dividing line corresponds with the zone line not the 500-foot elevation."

Jim Kavitsky, 890 W. Main Ave. told the Commissioners he is one of the other property owners along the line. Mr. Kavitsky expressed 'enormous resistance to development or changes to the current line'. "If the owner has no intent to develop the property, I don't see why there is a need for changing the zoning. It is important to have this be part of the green belt for the City," he said. "The higher elevations need the protection because they are not developable since the slope is there. I think this is still controversial."

CP Bischoff explained as a 'matter of clarification' that the zoning on the 1.5 acres is not proposed for change. He stated that this would offer protection for the area, citing 'lessons learned' from County development in 'difficult areas'.

With no others present to address the matter, the public hearing was closed.

Discussion ensued regarding:

- whether the existing house has historical significance; PM Rowe explained that during the recent historical resources survey, this was not identified as significant
- requirements of the Hillside Ordinance
- potential for development on the lower eastern portion of the site; the owner again stated, "At the present time there is not intent for development."
- additional environmental work would be required if a proposal to develop was forthcoming
- any proposed public trail must have additional environmental assessment
- concern of heights of any future structure

Minor changes to the initial study were noted.

**COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO APPROVE THE NEGATIVE DECLARATION. THE MOTION PASSED (7-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF ANNEXATION APPLICATION, ANX-0A8-06: MAIN-ACTON. NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH CARRIED (7 - 0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS, RECOMMENDING APPROVAL OF ZONING APPLICATION, ZA-08-14: MAIN-ACTON COMMISSIONER**

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**ACEVEDO PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**2) UP-08-11:  
BARRETT-  
COLSON &  
COLSON**

A request for approval of a conditional use permit for the construction and operation of a 138-suite congregate care retirement residence approximately 115,600-sf in size located near the northwest corner of Barrett Ave. and Butterfield Blvd. on a 5.3-acre site in a R3(PD) zoning district.

PM Rowe gave the staff report, advising this request is to construct and operate a 138-unit congregate care retirement residence, providing units for up to 138 senior citizens (with up to 150 residents total). PM Rowe reminded that in October 2008, the City Council approved a General Plan amendment and Zoning amendment for the proposed congregate care retirement residence, with an attached condition for zoning approval by the Council. R-3 zoning was approved by the City Council in October, as was the General Plan Amendment. PM Rowe continued with the overview of the request, as the matter had been advertised for public hearing at this meeting. However, PM Rowe further advised, staff for the applicant could not be present at this meeting to address the Commissioners, and consequently had sent a request to have the matter of UP-08-11: Barrett-Colson & Colson continued to the January 13, 2009 Commission meeting.

Chair Koepp-Baker open and then closed the public hearing as there were no persons present indicating a wish to speak to the matter.

**COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO CONTINUE THE MATTER OF UP-08-11: BARRETT-COLSON & COLSON TO THE JANUARY 13, 2009 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WAS ABSENT.**

PM Rowe said staff did receive some questions regarding the request, and will bring those to the scheduled January meeting.

**3) ZA-08-18/  
SD-08-07/  
DA-08-02/  
DS-08-03:  
DIANA-EAH**

A request for approval of a mitigated negative declaration, subdivision, development schedule and recommendation for Council approval of a zoning amendment and development agreement for an 80 unit project proposed within an 8-acre PUD bound by E. Dunne Ave., Butterfield Blvd., Diana Ave. and the railroad. The proposed project development plan would allow 40 townhouses, 40 senior apartment units, a 27,000 sq. ft. restaurant and two office buildings of approximately 19,000 sq. ft.

SP Linder presented the staff report, providing an overview of the project and the how the project met the deadlines set by the Planning Commission and City Council in granting the extension of time request in August.

SP Linder reminded that as part of the adoption of the Downtown Plan that language was added to the General Plan requiring residential development at a density of 25-40 du/acre. SP Linder describe how the proposed precise development plan met the density of the General Plan and met most of the development criteria of Ordinance 1488 which defined

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the current PUD zoning designation on the subject site.

SP Linder went on to give an overview of the current plan and how it compared with the scoring (points) of the original RDCS application layout.

Speaking to the commissioners, SP Linder addressed other issues such as:

- \* noise levels from the railroad and Dunne Ave.
- \* driveway access and shared circulation
- \* potential problem could occur in meeting future build out as a mixed-use project with a 25-40 du/ac General Plan requirement.
- \* the Downtown Plan update would be an opportunity to revisit density and mixed use requirements on the site.
- \* Ordinance 1488 requirements ~~ change needed; front part of project compatible with Community Center ~~ back portion of project seems to play off Courthouse design
- \* need for discussion re timing and phasing of project: obtain building permits

Discussion ensued between Commissioners and staff regarding infiltration of outside noise into dwelling units and potential solutions, e.g., window closures, etc. It was decided that monitoring of such would be difficult if not impossible.

SCE Creer joined the discussion in response to questions regarding the potential location of the under-grounding of the railroad, as well as discussion on the placement of the high-speed rail system. It was determined that another EIR would have to be done as the high-speed rail came closer to reality.

Chair Koepp-Baker opened the public hearing.

Project manager Felix AuYeung, 21269 E Francisco Blvd.; Suite B; San Rafael, told the Commissioners that the project was 'on time and in good shape now'. "Furthermore," he said, "we feel good about the process of going forward with South Valley Developers." Mr. AuYeung spoke on the two phases (sections) of the project, as well as the RDA commitment needed to make the project financially feasible, noting that details of the financial arrangements were on going.

Mr. AuYeung spoke further to the Commissioners asking for changes to the development schedule (in relation to RDA needs and requirements) timeline by asking for a change to April 10 (instead of February 30, 2010) for obtaining building permits and moving building permit submittal to November 15, 2009 (~~August 15, 2009~~).

Commissioner Lyle led discussion of one of the changes suggested by SP Linder: senior portion of the project being started first and asked Mr. AuYeung if that would that is problem? [difficult to predict based on funding available and potential for sales] Commissioner Lyle explained the need for getting the 'affordable aspect' of senior housing on-line and recounting the difficulties in the past when a developer failed to honor commitments to ensure BMRs were completed.

Mr. AuYeung said his organization 'exclusively does affordable housing and will do the BMRs as soon as financing is available'. "We can do the schedule concurrently with the

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market rate and will do the affordable ASAP,” he said. Mr. AuYeung then responded to Commissioner questions regarding:

- \* change of original plan from for sale units to for rent
- \* request to update - not delete - items of RDCS commitment; staff says identified items must be of equal or greater value, e.g., HVAC, water heating, etc., and will be upgrades only with an approved plan going forth to the City Council [PM Rowe advised: commitments can have amendments]

Other discussions centered on:

- targeted age groups (62 and above)
- tax agreement applicant deadline (2 rounds per year: 1 in March and 1 in June) and applicant’s plan to submit applications (2<sup>nd</sup> round)
- concern of need acoustics study re: carports placement toward rail road tracks
- wish to not have a sound wall
- trash enclosure placement
- need to protect future residents through disclosures

Al Cherry, 1405 E. Main, told the Commissioners he was present to represent one of the nearby property owners, Helen Payne, who was requesting some assurance for access to the property, which will remain in her family. Mr. Cherry told of the two driveway accesses to Diana on the east and west and stated that the property owner wants to continue to have access and does not want a ‘joint driveway’. Commissioner Mueller assured Mr. Cherry that the existing driveways will not be impacted by this particular project. “However, in the future under the PUD there could be more residential and an office building,” he said. “The driveways could be subject to review at that time.”

Mr. Cherry stressed that the street was almost developed to the center of the property and said that when this project goes in development will be to the edge of the property. “Our concern is shutting off the driveway access,” he said.

SP Linder advised that as part of the project development, the applicant is responsible for improvements and the two {existing} driveways will receive improvements as well.

Scott Schilling, 16060 Caputo Dr. #160, addressed the Commissioners, saying, “We have been working on this project for many months and the design tonight is a compilation of many efforts. We will be putting in improvements and we will put in new driveway aprons. The neighbor’s biggest inconvenience will be just during construction.”

Mr. Schilling went on to address:

- layout of buildings: provision of buffer (interior garage doors) for sound reduction
- sanitary sewer easement
- truck access into nearby restaurant; traffic pattern explained
- aim: provide high quality living environment for residents
- from architectural standpoint, looked at courthouse and tried to pull in elements to project design is ‘more green’
- will warm project with colors
- use of fewer materials

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- flat roofs will lessen building height somewhat
- will do BIG and Energy Star
- request to update commitments to meet points (will submit to staff within the week for revision)

Responding to a question from Commissioner Lyle regarding the development schedule, Mr. Schilling predicted a 2010 'start time'. He also spoke to issues of :

- sales for the units
- moderate price ranges
- sizes of units (square footage)
- exciting project for first time buyer
- project is close to downtown
- tandem garages: two spaces within garage area ~~ garages to be 'deeper not wider'
- melding of the two phases through design
- retention of contemporary design but softens though use of colors, etc.
- roof design: Architect and developer will work with Planning Commission and ARB to study design

With no others present indicating a wish to speak to the matter, the public hearing was closed.

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION WITH A MODIFICATION to:**

***G. Noise* Carports nearest rail road are to be reviewed for reduction of acoustical impact from trains**

Under discussion, Commissioner Lyle asked about a condition to have windows closed for noise reduction. That was not agreed due to staff's concern with the difficulty of ongoing enforcement and the units will be equipped with the proper windows to reduce noise levels consistent City requirements..

**THE MOTION PASSED (7 – 0) WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.**

**COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, RECOMMENDING APPROVAL OF AN AMENDMENT TO A PLANNED UNIT DEVELOPMENT ESTABLISHED UNDER ORDINANCE 1488 TO INCORPORATE A PRECISE DEVELOPMENT PLAN AND AMENDMENTS TO THE PERMITTED USES AND DEVELOPMENT STANDARDS.**

Commissioner Mueller consulted with Staff on the need to add language re: the courthouse design; SP Linder said it was addressed in the development standards.

**COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**



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**COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, APPROVING A TENTATIVE MAP FOR A 41-LOT SUBDIVISION ON A 2.1-ACRE SITE LOCATED ON THE SOUTH EAST CORNER OF THE INTERSECTION OF DIANA AVE. AND THE RAILROAD TRACKS. COMMISSIONER ESCOBAR PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Commissioner Mueller turned discussion to sequencing of units and the request for changes to the development agreement. "I think work on the two phases must be concurrent for the project to work," he said. "The concern is: if they are concurrent, literally the developer would have to pull permits at the same time and there is concern about the timeline of the federal housing program funding."

Chair Koepp-Baker responded to a request to reopen the public hearing.

Mr. Schilling advised that it is very likely that the final map for both projects will have to record concurrently, but that there could be language that the senior units must have the permits first. "In all actuality," he said, "it is likely that both projects will be going at the same time." Responding to other questions, Mr. Schilling said that the infrastructure of the onsite and off site would be completed together.

The public hearing was closed.

**NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN, COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION, DA-08-02: DIANA-EAH FOR MC-05-08: DIANA-EAH, and providing the following modification:**

*Page 8 (Section 14 l) add: The permits for the senior project must be pulled before, or concurrently with, the market rate units. There may not be equal number of permits for the units in the PUD pulled, however, the senior units pulled must stay ahead.*

**COMMISSIONER ESCOBAR PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Commissioner Mueller asked Mr. Schilling, if it would be possible to begin construction in two months?

Mr. Schilling answered from the audience, "Once the map records, construction can begin." He went on to assure that the Measure C requirements for commence construction would be 'doable'.

**COMMISSIONER MUELLER OFFERED A RESOLUTION APPROVING DEVELOPMENT SCHEDULE APPLICATION, DS-08-03: DIANA-EAH FOR**

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**BUILDING ALLOCATIONS FOR FY 2008-09 & FY 2009-2010 AWARDED TO MEASURE C APPLICATION, MC-05-08: DIANA-EAH, INCLUSIVE OF THE FINDINGS AND CONDITIONS SO IDENTIFIED, AND WITH THE FOLLOWING MODIFICATIONS:**

**Exhibit "A":**

**Obtain Building Permits (both phases) ~~02-30-2010~~ 04-30-2010**

**Building Permit Submittal (both phases) (~~08-15-2009~~)- 11-15-2009**

**COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED (7 - 0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**ANNOUNCEMENTS/**  
**COMMISSIONER**  
**IDENTIFIED**  
**ISSUES:**

Commissioner Mueller suggested: "There is need for discussion soon regarding horizontal verses vertical mixed use and whether projects should be allowed to make 'huge changes' from what was initially submitted for scoring under the RDCS. I have real major concerns if we are meeting the intent of RDCS when the plan has changed so dramatically."

Commissioner Lyle said there might be need to establish some policy for mixed use.

Commissioner Mueller noted there is also need to determine if precise plans are consistent with the General Plan. SP Linder advised of the General Plan language for mixed use, the said the matter can be studied as part of the Downtown Plan update.

Several comments were offered by the Commissioners regarding the architecture of the project. Mr. Schilling again spoke from the audience, "We will work with ARB and take your comments into consideration."

Commissioner Tanda asked agendaization for discussion on effects of the placement of the high-speed rail lines. Others agreed, saying it would be beneficial to have a representative of the Railroad Authority, present for the dialogue to include discussion on inclusions for the EIR.

**CITY COUNCIL**  
**REPORTS:**

None

**ADJOURNMENT:**

Noting that there was no further business for the Planning Commission at this meeting, Chair Koepp-Baker adjourned the meeting at 9:22 pm. and thanked Commissioner Davenport for outstanding participation, especially in the emphasis area of Build It Green.

**MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**